STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

CENTRAL ILLINOIS PUBLIC SERVICE COMPANY and UNION ELECTRIC COMPANY	)	
Petition for approval of tariff sheets implementing revised Market Value Index methodology.	)	Docket No. 02-0656
COMMONWEALTH EDISON COMPANY	)	
Proposed revision of Rider PPO (Power Purchase Option - Market Index), Rate CTC (Customer Transition Charge) and Rider ISS (Interim Supply Services), and to establish Rider CTC - MY (Customer Transition Charge - Multi-Year Experimental). (Tariffs filed on October 1, 2002)	)	Docket No. 02-0671
ILLINOIS POWER COMPANY	)	
Proposed establishment of Rider MVI II, Market Value Index II. (Tariff field October 1, 2002)	)	Docket No. 02-0672 (Cons.)

INITIAL BRIEF

ON BEHALF OF THE

UNITED STATES DEPARTMENT OF ENERGY

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United States Department of Energy

JANUARY 29, 2003

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COMES NOW, the United States Department of Energy ("DOE") on behalf of Argonne National Laboratory and Fermi National Accelerator Laboratory and on behalf of other Federal Executive Agencies, by its counsel, and hereby submits its Initial Brief in the above-captioned matter pursuant to Section 200.800 of the Rules of Practice of the Illinois Commerce

Commission ("Commission").

INTRODUCTION

The United States Department of Energy will confine itself in this brief to the primary issue that its witness, Dr. Dale Swan, addressed in his direct testimony – the appropriateness and the design of Commonwealth Edison Company's ("ComEd" or "the Company") proposed Rider CTC-MY. However, a few general comments on the Company's various other proposals in this case are appropriate. As Dr. Swan testified, DOE believes the "general direction of the Company's proposed changes is beneficial to customers who need to compare supply alternatives." (DOE Exhibit 1.0, lines 50-51.) As Dr. Swan further stated, "...the Company's efforts to improve the accuracy of its MVI calculations, and it proposal to advance the availability of MVI, PPO and CTC information by two months and increase to approximately two months the time available for a customer to decide whether to take PPO service are both marked improvements in the process." (DOE Exhibit 1.0, lines 51-55.) No doubt, there remain a number of improvements that could still be made to the calculations and the process of providing MVI information. Nevertheless, DOE believes that, as a general proposition, the Company's proposals do constitute an improvement in the procedure.

V. MULTI-YEAR OPTION ISSUES

B. Length of multi-year contracts

The Company has proposed to offer Rider CTC-MY, which would provide a 2-year fixed MVI for customers with individual CTC calculations. DOE understands that the Company is not required to offer a multi-year CTC by law but is doing so in response to the concerns raised by numerous large customers and Retail Electric Suppliers ("RESs") that a multi-year fixed CTC is necessary in order to obtain from RESs multi-year bids that will provide multi-year, all-in, fixed price supply options that customers can compare with staying on Rate 6L through the remainder of the transition period. DOE understands that the essence of the Company's CTC-MY proposal is to establish for customers with loads of 3MW or higher, a fixed MVI for two years that would apply if the customer decides to take service from a RES. Thus, that customer's CTC would remain fixed, except for any changes that would result from changes in transmission and distribution rates and the mitigation factor. Importantly, the Company's proposal is that this service would be limited to the first 500 MW of load that subscribes, although there is no detailed explanation regarding how that subscription process would work.

Nearly every other party to the proceeding that addressed the ComEd CTC-MY proposal or similar proposals of the other utilities through witness testimony has endorsed the concept. (Sharfman, BOMA EX. 1.0, page 28; Gale and O'Conner, RES COALITION EX. 1.0, page 35; Bollinger, Goerss and Spilky, RES COALITION, EX. 4.0, page 60; Stephens, IIEC EX 1.0, page 4; Turner, TRIZEC EX. 1.0, page 9; Zuraski, ICC STAFF EX. 1.0, page 30; and Swan, DOE EX.1.0, page 3.) Yet, nearly everyone of these witnesses essentially testified that, while it is a step in the right direction, the Company's proposal should be expanded in order to achieve the objective set forth by the Company – to provide a mechanism by which customers can obtain price certainty during the remainder of the transition period. In this regard, there are three points made repeatedly by these witnesses:

1. The CTC-MY should be extended through 2006 (either through the May meter reading in 2006 or through the end of the transition period);

2. The service should not be limited to the first 500 MW of load; and

3. There should be an adder to the multi-year MVI to reflect the benefits that will accrue to the Company from the elimination of the supply risk that comes from customers' multi-year commitments to purchase from a RES.

The primary reason that the Rider CTC-MY should provide a fixed MVI through December 2006 (or at least through the May 2006 meter read) is that many large customers desire to obtain a fully fixed price from the market that they can compare with the fixed Rate 6L, because these customers are, by nature, risk averse. That clearly includes the Federal Executive Agency customers that DOE represents. In the absence of a 3-year fixed MVI/CTC, it is not possible to hedge the third year of the transition period. As Dr. Swan stated in his testimony, "What many customers are likely to do is wait until the spring of 2004 to evaluate their options for the remainder of the transition since, under the Company's proposal, they can get a locked-in CTC from June 2004 through May 2006, and so should be able to obtain firm, 'all-in' price bids from ARES for that two years, which they can compare to the certainty of 6L rates." For the upcoming year, these customers would most likely return to Rate 6L to keep their options open. In short, the Company's proposal may have the unintended effect of encouraging a wholesale return to Rate 6L at the end of May 2003.

DOE strongly urges the Commission to encourage the extension of the Company's proposed

Rider CTC-MY through the remainder of the transition period. Contrary to the Company's argument, Dr. Swan demonstrated clearly that the risk to the Company of providing that third year fixed MVI should not be a critical concern because the Company will be able to fully hedge any risk associated with the actual market price deviating significantly from the market price used in determining the third-year MVI. (DOE Ex. 1.0, page 9.) Further, he demonstrated that the Company's concern about the increased risk that customers would have to carry is misplaced. Specifically, Dr. Swan testified that any customer that took advantage of the multi-year CTC would be doing so voluntarily because that customer values price certainty and is willing to take the risk that the actual CTC will be less than the multi-year CTC that he contracts for. As Dr. Swan stated, that is the nature of a price hedge and the Commission should be unconcerned about customers taking on that type of risk as long as they are doing so voluntarily. (DOE EX.1.0, pp. 8-9.)

E. Limitation on load eligible for multi-year TC contracts.

The Company's proposal to cap the availability of Rider CTC-MY to 500 MW of load is totally inappropriate. Of particular concern is that 6L service for customers with loads of 3 MW or more has been declared competitive. That means that, once they leave 6L, they no longer have that service option available to them. Since 6L service is the only current option that will afford these customers the ability to get locked-in prices for the remainder of the transition period, the Company's proposal is tantamount to depriving these customers of firm, fixed-price service if they are unable to subscribe to Rider CTC-MY. In fact, as Mr. Turner for Trizec Properties has testified, the approximately 375 customers that fall into this category account for approximately 2,500 MW of load.

That means that, despite the Company's good intentions, approximately 80 percent of the load of these customers will be unable to get locked-in prices under the Company's proposal. (Trizec EX. 1.0, page 9.)

This strikes DOE as particularly unfair for this customer group. Not only are these customers denied the ability to continue to take Rate 6L service once they opt for market based rates, but the Company's proposal would allow only a few of those customers to lock in firm market-based rates for the duration of the transition period. Mr. Crumrine for the Company argues that the 500 MW cap is intended to limit the risk that the Company will incur to provide multi-year CTCs. We do not understand this argument because, as Dr. Swan has testified, the Company should be capable of fully hedging any risk associated with offering fixed out-year CTCs. That risk can be equally well hedged if it is 500 MW or the full 2,500 MW that is referred to by Mr. Turner. The RES panel of Messrs. Gale and O'Connor testified that, "...any limitation [on the availability of CTC-MY] must be specifically justified by ComEd. So far the Company has failed to do so." DOE agrees with this assessment.

In addition to the fundamental unfairness of the 500 MW cap, DOE believes administration of this limitation will lead to significant difficulties both for the Company and for the customers. How would the allocation of the 500 MW availability be handled? If on a "first-come-first-served" basis, exactly how would that work? It is likely that subscriptions would be made to keep open options as long as getting in the queue would not immediately commit the customer to taking the service. That is likely to result in an "Oklahoma Land Rush" situation and the Company has been able to offer no guidance about how customers would be queued up if this situation exists. Moreover, the timing problems this poses for customers are very serious, as was explained in detail by Dr. Swan. (DOE EX. 1.0, pages 10-11.)

DOE believes there is no need for the Company to cap the availability of Rider CTC-MY in order to limit its risk. However, if it does insist on limiting the availability of this service, DOE would recommend that the cap be set high enough to accommodate all of the customers with loads of 3 MW or more. That suggests that the limit should be set at something above 2,500 MW (say, 2,600 MW) since it is our understanding that the 2,500 MW figure referred to by Mr. Turner is a coincident demand figure.

G. Other

Since, by our understanding, the Company cannot be required to offer a multi-year CTC nor change the terms of the CTC-MY rider that it is proposing, it will be difficult to amend the terms of the CTC to expand it in the manner that DOE and most of the other parties recommend. Accordingly, the parties cannot rely on a directive from the Commission. In his rebuttal testimony, Mr. Crumrine, on behalf of the Company, stated that, "...ComEd would be willing to discuss these issues with other interested parties to determine whether some mutually agreeable adjustments are available." (ComEd EX. 6.0, page 39.) DOE is also willing to participate in those discussions and we expect that most of the other parties would also be equally willing. Consequently, DOE urges the Commission to take whatever steps it can to accommodate and facilitate such discussions with an eye toward permitting the results of any agreed-upon revisions to the proposed CTC-MY to be implemented in time for the 2003 Period A.

WHEREFORE, for all of the foregoing reasons, DOE respectfully requests that Dr. Swan's recommendation that ComEd's proposed Rider CTC-MY be extended either through the May meter reading in 2006 or through the end of the transition period, and that availability of service under Rider CTC-MY be set at 2,600 MW be adopted by the Commission in this proceeding

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Respectfully submitted,

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